

VARIANCE REQUEST FROM THE INTERIM ZONING REGULATION (RESOLUTION 2038)
BROOKS HOTEL, LOT 6-A, AP (R&G DEVELOPMENT)

STAFF REPORT FOR THE RAVALLI COUNTY BOARD OF ADJUSTMENT

CASE PLANNER: Shaun Morrell *SM*

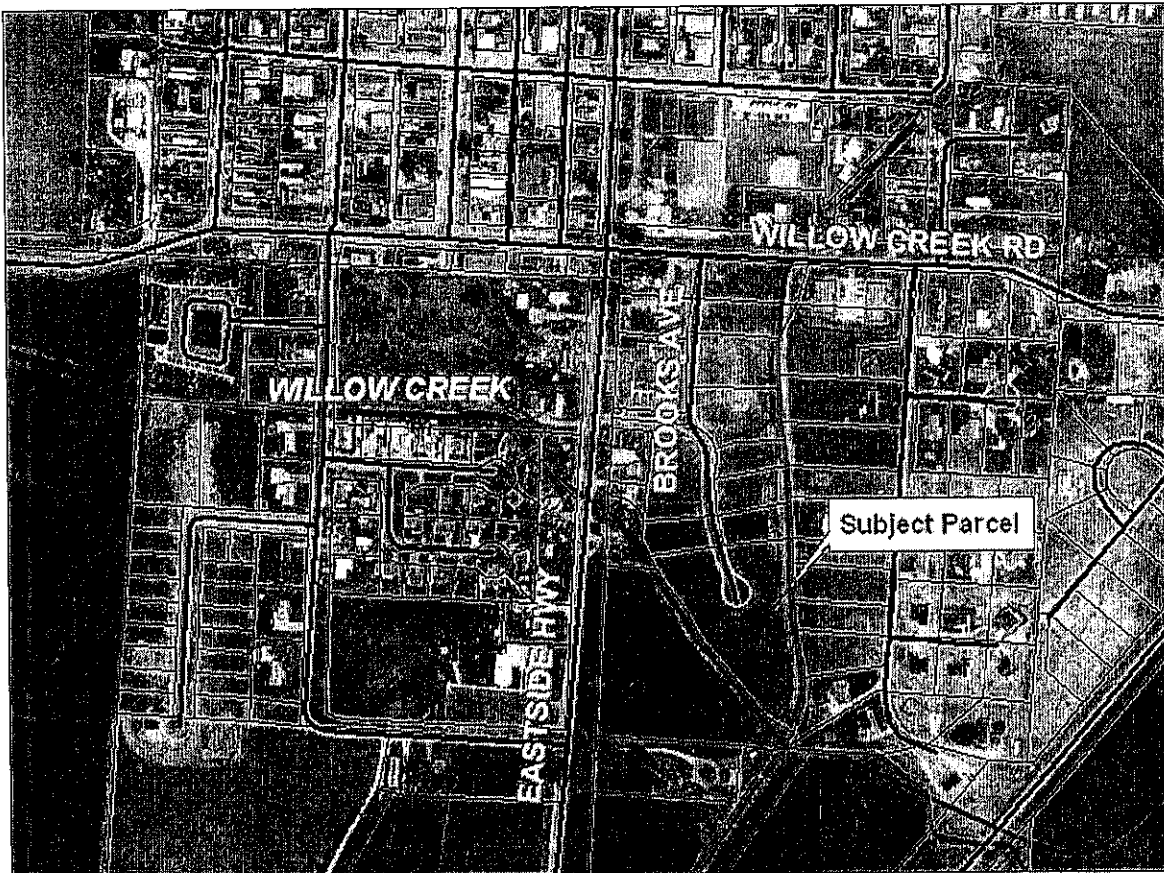
REVIEWED/
APPROVED BY: Karen Hughes *KH*

PUBLIC HEARING: May 30, 2007, at 6:00 p.m.

APPLICANT: R&G Development
448 Quast Lane
Corvallis, MT 59828

REPRESENTATIVE: Bitterroot Engineering
1180 Eastside Highway
Corvallis, MT 59828

LOCATION OF REQUEST: The property is located in the community of Corvallis off of Brooks Avenue. (See Map 1)



Map 1: Location Map
(Source Data: Ravalli County Planning Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

Lot 6-A of the Brooks Hotel subdivision, located in the NW ¼ of Section 4, T6N, R20W, P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The variance application was determined to be complete on May 9, 2007. Agencies were notified of the subdivision. No comments have been received to date.

LEGAL NOTIFICATION:

A legal advertisement was published in the *Ravalli Republic* on May 15 and 22, 2007. Adjacent property owners were notified by certified mail postmarked May 15, 2007. No public comments have been received to date.

**DEVELOPMENT
PATTERN:**

Subject property	Vacant
North	Residential
South	Vacant
East	Residential
West	Vacant

INTRODUCTION

R&G Development is requesting a variance from the "Interim Zoning Regulation Limiting Subdivisions to a Density of One Residence per Two Acres for a Period of One Year" (Resolution 2038). This request is being made in conjunction with the proposed Brooks Hotel, Lot 6-A, AP, subdivision. The applicant proposes to subdivide a 3.35-acre parcel, creating fourteen (14) residential condominium units on seven (7) lots. The applicant has received preliminary approval from the Corvallis Sewer District for sewer connections to 14 units. The adjoining properties are predominantly residential lots of less than one acre.

SUMMARY

A variance may only be approved when positive findings are made on all of the criteria outlined in the interim zoning regulation. The following is a summary of the staff conclusions for each criterion, as analyzed below:

Criterion	Staff Conclusion
A. The variance is consistent with the general purposes of the interim zoning regulation and will conform to all of the following requirements and stipulations.	Negative
B. Strict application of the interim zoning regulation would result in great practical difficulties or hardship to the applicant (not mere inconvenience) and prevent a reasonable return on the property.	Negative

C. The variance is the minimum deviation from such requirements that will alleviate the difficulties/hardship, and allow a reasonable return on the property.	Negative
D. The plight of the applicant is due to circumstances not of his/her own making.	Positive
E. The circumstances engendering the variance request are peculiar and not applicable to other property within the district.	Negative
F. The variance will not alter the essential character of the area where the premises in question are located, nor adversely affect the public health, safety, and/or welfare.	Positive
G. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulation or comprehensive plan.	Positive
H. The variance will not contribute to the emergency situation that exists in Ravalli County, as defined in the interim zoning regulation.	Positive
I. The variance is in the public interest.	Positive

RECOMMENDED MOTION

That the variance request from the "Interim Zoning Regulation Limiting Subdivisions to a Density of One Residence per Two Acres for a Period of One Year" (Resolution 2038), to allow the property to be subdivided into fourteen units on seven lots, be **denied**, based on the findings of fact and conclusions of law in the staff report.

COMPLIANCE WITH REVIEW CRITERIA

CRITERION A. The variance is consistent with the general purposes of the interim zoning regulation, and will conform to all of the following requirements and stipulations.

Findings of Fact:

1. The following findings (italicized text) are excerpted from the preamble of the interim zoning regulation, and are understood to constitute the "general purposes" of the interim zoning regulation:

Whereas, the citizens of Ravalli County, Montana, deem an interim zoning regulation limiting development to one (1) dwelling per two (2) acres necessary to address the emergency situation in Ravalli County until long-term regulations have been adopted; and...

Whereas, this Interim Zoning Regulation is designed to provide the following emergency protections pending the adoption of long-term zoning regulations thoroughly addressing development in Ravalli County:

1. *Protect the public health, safety, and general welfare of the people; and*

2. *Conserve the values of property throughout the county and protect the character and stability of agricultural, residential, business, and industrial areas.*

2. In defining the “emergency situation,” the preamble cites a variety of concerns related to public health, safety, and general welfare, to justify the implementation of the interim zoning. The relevant findings are excerpted from the preamble below (italicized text), each followed by an analysis (bulleted points) of its relevance to this variance request:

Whereas, [Aspen Springs and Legacy Ranch] and other proposed subdivisions have the potential to substantially and permanently affect public health, safety, and general welfare and would be inconsistent with and frustrate Ravalli County’s adopted Growth Policy...

- In terms of the total number of units proposed, a 14-unit development would be approximately 2% the size of Aspen Springs (643 units) or Legacy Ranch (582 units).
- The overall average number of units proposed in subdivision applications submitted since May 1, 2006, (excepting Flatiron Ranch, a proposed subdivision of 626 units) is approximately 21 lots.
- By the above measures, a 14-unit condominium proposal constitutes a relatively small development.
- An analysis of the proposal’s consistency with the Growth Policy is outlined under Criterion G (see below). The proposal is generally consistent with the recommendations of the Growth Policy.

Whereas, the Sheriff of Ravalli County has indicated his ability to provide law enforcement services is already stretched to the limit, stating in his 2005-2006 Budget Request “that the impact this subdivision (Aspen Springs at Florence) will have on my office may certainly be the straw that breaks the camel’s back”...

- While the proposal may cause an increase in the demand for law enforcement services, the potential impacts of a 14-unit subdivision are not comparable to those of a 643-unit subdivision.
- The Planning Department contacted the Ravalli County Sheriff’s Office for comment on this variance request. No response has been received to date.

Whereas, the Tri State Water Quality Council Septic System Impact on Surface Water study provides evidence that conventional septic systems are not adequate for removing nitrates and other pathogens where soils and/or groundwater conditions are marginally suitable or where septic system densities are too high...

Whereas, population densities proposed by new Ravalli County subdivisions go far beyond nationally recognized safe septic system densities...

- The variance request states that wastewater treatment would be provided through the Corvallis Sewer District. A letter of the District’s approval was provided with the application.

Whereas, new developments have caused infrastructure demands beyond the capability of the county government, school, and fire districts to cope...

- The subject proposal is located in close proximity to the community of Corvallis. Generally, development located near established communities with existing infrastructure poses a lesser demand on public infrastructure than development located in more remote settings.

- Based on a factor of 0.5 school-aged children per household (source: Census 2000), this development has the potential to add seven (7) students to the Corvallis school system.
 - The Planning Department contacted the Corvallis School District, Corvallis Fire District, and the Ravalli County Road and Bridge Department for comment on this variance request. No response has been received to date.
3. The public health, safety, and general welfare are considered to be synonymous with the "public interest," as discussed under Criterion I (see below).
 4. An analysis of the proposal's consistency with the character of the surrounding area is outlined under Criterion F (see below).
 5. Negative findings have been made on criteria B, C, and E.

Conclusions of Law:

1. The variance request is consistent with the general purposes of the interim zoning regulation.
2. The variance request does not conform to all of the variance criteria.

CRITERION B. Strict application of the interim zoning regulation would result in great practical difficulties or hardship to the applicant (not mere inconvenience) and prevent a reasonable return on the property.

Finding of Fact:

1. The applicant has stated that the interim zoning regulation poses a financial difficulty/hardship in the development of this property. This is distinct from a *practical* difficulty/hardship, which is generally considered to result from unique physical conditions on the land that, in concert with the regulation in question, completely prevent the use of the land.
2. The subject property can be improved through the construction of one residential structure, or subdivided for commercial purposes.
3. The applicant has not provided information to prove that the interim zoning regulation prevents a reasonable return on the property.

Conclusions of Law:

No information was provided upon which to make a determination that the interim zoning regulation poses a great practical difficulty or hardship, nor that it prevents a reasonable of return.

CRITERION C. The variance is the minimum deviation from such requirements that will alleviate the difficulties/hardship, and allow a reasonable return on the property.

Finding of Fact:

1. Given the parcel size of 3.35 acres and a minimum lot size of two acres, the minimum conceivable deviation from the interim zoning regulation would be to permit the creation of two lots or units.
2. The applicant has not adequately identified the difficulty/hardship per Criterion B above, nor provided adequate evidence suggesting that a seven-lot (14-unit) subdivision is the minimum deviation required to alleviate the difficulties/hardship and allow a reasonable return.
3. To meet this criterion, the variance could be conditioned upon a smaller number of resulting lots/units.

Conclusion of Law:

This proposal is not the minimum deviation required to alleviate the difficulties/hardship and allow a reasonable return.

CRITERION D. The plight of the applicant is due to circumstances not of his/her own making.

Findings of Fact:

1. The parent parcel was deeded to the current landowner on April 20, 1999, prior to the enactment of the interim zoning regulation on November 7, 2006.
2. The subject property was created through subdivision on May 25, 2005 (AP# 553940).
3. The subject property is 3.35 acres in size, and therefore cannot be further subdivided under the interim zoning regulation without a variance.
4. Since the enactment of the interim zoning regulation, it does not appear that any plat amendments, boundary line relocations, re-subdivisions, or other cadastral changes have been made to the subject parcel that would necessitate this variance request.

Conclusion of Law:

No action on the part of the applicant has contributed to the perceived hardship now imposed by the interim zoning regulation.

CRITERION E. The circumstances engendering the variance request are peculiar and not applicable to other property within the district. [Staff note: The "district" is defined as the unincorporated area of Ravalli County.]

Findings of Fact:

1. The variance request is engendered (i.e., caused) by the size of the subject property, which prevents the applicant from subdividing and developing the land to the desired density.
2. There are many parcels throughout the unincorporated area of Ravalli County that cannot be subdivided to a minimum lot size of two acres, as required by the interim zoning variance regulation.

Conclusion of Law:

The circumstances engendering this variance request are not unique to this property.

CRITERION F. The variance will not alter the essential character of the area where the premises in question are located, nor adversely affect the public health, safety, and/or welfare.

Findings of Fact:

1. The variance request proposes to create 14 units (7 lots) on 3.35 acres, for an average of 0.24 acres per unit (average lot size of 0.48 acres).
2. Nine of the 10 lots surrounding the subject property are less than one acre each and are predominantly residential. The neighboring parcel to the west is approximately four acres in size and is currently undeveloped.
3. The subject property is located within the community of Corvallis.
4. Agencies were notified of this variance request on April 30, 2007. No comments have been received to date.

5. Given the information available, the Planning Department has not yet identified any major impacts on public health, safety, or welfare that would be created by this development.
6. An analysis of this proposal's impacts on the emergency situation, as defined in the preamble of the interim zoning regulation, is outlined under Criterion A (see above).
7. Each subdivision proposal must be reviewed under the Ravalli County Subdivision Regulations for potential impacts on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety. If any significant negative impacts are identified, they will be mitigated through conditions of final plat approval.

Conclusions of Law:

1. The proposal is consistent with the general character of the surrounding area.
2. If the variance request is approved, potential impacts on public health, safety, and welfare will be mitigated through the subdivision review process.

CRITERION G. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulation or comprehensive plan.

Findings of Fact:

1. There are no adopted zoning regulations in effect for this property, other than the interim zoning regulation (Resolution 2038).
2. Relevant provisions of the Ravalli County Growth Policy are outlined in italics below. Each Growth Policy recommendation is followed by an analysis (bulleted points) of its application to the variance request.

Countywide Policy 1.3: Encourage new development that allows continued agricultural and forestry activities. The intent of this policy is to minimize the adverse impacts of new development on agricultural and forestry operations; (i.e., nuisance litigation over weed spraying, dust, livestock odors and noise.)

- The subject property is not currently used for agricultural purposes.
- Higher-density residential development in close proximity to existing communities and infrastructure, such as this proposal, is generally presumed to relieve development pressure in more remote, rural areas, where conflict between agricultural and residential uses is more likely to occur.

Countywide Policy 2.3: Encourage the protection of water quantity and quality, including the mitigation of adverse cumulative impacts.

- The subject property is located within the Corvallis Sewer District. The District has granted approval for municipal wastewater hookups for 14 units on this parcel.

Countywide Policy 7.1: Encourage residential and commercial growth adjacent to existing infrastructure.

- The subject property is located on an existing road in close proximity to the community of Corvallis.
- The subject property is within the existing boundaries of the Corvallis Sewer District.

Countywide Policy 7.3: Encourage the development of quality affordable housing within our communities through collaborative efforts by the public and private sectors.

- Generally, higher-density condominium developments in the vicinity of existing communities provide more affordable housing options than the more commonly proposed large-lot subdivisions with single-family homes in remote areas.

Conclusions of Law:

1. Approval of the variance would not place the subdivision in nonconformance with any adopted zoning regulation.
2. The Growth Policy generally supports the approval of the variance request.

CRITERION H. The variance will not contribute to the emergency situation that exists in Ravalli County, as defined in the interim zoning regulation.

Finding of Fact:

The "emergency situation" is defined in the preamble of the interim zoning regulation. An analysis of this proposal's impacts on these factors is outlined under Criterion A (see above).

Conclusion of Law:

The proposed development is not expected to contribute significantly to the emergency situation.

CRITERION I. The variance is in the public interest.

Findings of Fact:

1. Given the information available, the Planning Department has not identified any major impacts on public health, safety, or welfare posed by this proposal.
2. In reviewing variance requests from the interim zoning regulation, the Planning Department defines the "public interest" as being the values reflected in the preamble of the interim zoning regulation, in the Growth Policy, and in the subdivision review criteria.
3. An analysis of this proposal's impacts on the emergency situation, as defined in the preamble of the interim zoning regulation, is outlined under Criterion A (see above). The proposed development is not expected to contribute significantly to the emergency situation.
4. An analysis of this proposal's consistency with the Growth Policy is outlined under Criterion G (see above). The Growth Policy generally supports the approval of the variance.
5. Each subdivision proposal is reviewed under the Ravalli County Subdivision Regulations for potential impacts on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety. If any significant negative impacts are identified, they will be mitigated through conditions of final plat approval.
6. Development near established communities with existing infrastructure is generally presumed to relieve development pressure in more remote, rural areas. The latter development pattern tends to pose a greater strain on public costs than the former.

Conclusion of Law:

The variance request appears to be in the public interest.